

REMARKS

Applicants respectfully request entry of the above amendments to the claims, and reconsideration of the application in light of the amendments to the claims and the arguments presented below.

The pending claims are set forth above. Claims 1, 2, 4-6, 10-12, 16 and 17 are currently pending. Claim 1 is cancelled and claims 16, 17 and 21 are amended herein. Claims 22 and 23 are newly added claims. Claims 3, 7-9, 13-15, and 18-20 are withdrawn from further consideration without prejudice of disclaimer.

The amendments to the pending claims are made without prejudice or disclaimer, do not constitute amendments to overcome any prior art rejections under U.S.C. §§ 102 or 103, and are fully supported by the specification as filed. No new matter has been added as a result of the above amendments. Specifically, support for newly added claims 22 and 23 can be found in originally filed claim 21. The rejections set forth in the Office Action have been overcome by amendment or are traversed by argument below.

1. Claims Objection

Claim 1 is objected to for using “from” instead of “form” and claim 21 is objected to for having improper form of being a multiple dependent claim dependent on another multiple dependent claim. Claim 21 is also objected to for reciting limitations of R¹, R³ and R⁵ without sufficient antecedent basis. Applicants thank the Examiner for noting the errors and have amended claim 21 to correct the objections. Applicants have withdrawn claim 1.

2. Rejection of claims under 35 U.S.C. § 102

Claims 1, 16, and 17 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Anderson (US 6,437,150) (“Anderson”). The Action states that Anderson discloses a composition for variably releasing fragrances comprising (a) a first organic agent that undergoes an intramolecular photochemical rearrangement that is induced by sunlight radiation to release a fragrance or form a second agent that is a fragrance; and (b) a carrier for topical administration to skin or hair or administration to articles of clothing and other textiles via washing or spraying methods. Applicants have withdrawn claim 1 and have amended claims 16 and 17. The rejection of claims 1, 16 and 17 under 35 U.S.C. § 102(b) in view of Anderson is therefore moot.

3. Rejection of claims under 35 U.S.C. § 103

Claims 2, 4-6 and 10-12 are rejected under 35 U.S.C. § 103(a) for being unpatentable over Anderson (US 6,437,150) (“Anderson”) in view of Rock (US 6,022,529). The Action alleges that Anderson discloses (albeit generically) the use of molecules that undergo photochemical transformation to emit smell in topical creams and sprays, and that Anderson teaches organoleptic alcohol chain as such fragrance molecule which is a byproduct of photoactivation. Moreover, the Action asserts that the organoleptic alcohol chain is further attached to a variety of ketones, esters, and other oxygen containing organic compounds. The Action continues to state that Anderson does not disclose the specific structure of instant application; however, Rock fills this gap by disclosing structure(s) identical to Applicant’s fragrance molecule. The Action allegedly asserts that it would have been obvious to one having ordinary skill in the art at the time of invention was made to use the composition of Rock with the invention of Anderson as Anderson’s invention is identical to the teachings of the current application and the specific structures are known in the art through the teachings of Rock. In its support, the Action argues that the R¹ group of Rock could be substituted easily with the molecule disclosed in Anderson to achieve the same purpose as Anderson and the substitution of one known element for another would have yielded predictable results to one of ordinary skill in the art at the time of invention. The Action is devoid of any reason why the skilled worker would have made such a substitution of the R¹ group of Rock with the fragrance molecule disclosed herein, absent the fatal error of hindsight. Furthermore regarding claims 5 and 9-10 specifically, the Action asserts that Anderson discloses an auxillary fragrance and an original molecule that will photorearrange to become a fragrance.

Applicants respectfully contend that the combination of the Anderson reference and the Rock reference is improper and does not support the asserted obviousness rejection except by the application of hindsight. The Anderson reference generically teaches the advantages of using photorearrangeable molecules for a variety of purposes, including but neither limited to or specifically directed to releasing fragrances. Indeed, the primary Anderson reference is so deficient in such teachings that the Action is compelled to expressly state on page 4 that the Anderson reference does not teach the specific structures disclosed in the instant application. The Action thus establishes conclusively that the claimed invention would not have been obvious to the skilled worker in view of the teachings of the Anderson reference alone.

Thus, in order for the pending claims to be properly rejected under 35 U.S.C. § 103(a), the Office is under the burden of asserting a reason why the skilled worker would have recognized the Rock reference as being relevant to the problem to be solved by the invention and to have had a reasonable expectation that the combination of the references would reliably produce the claimed invention. However, the Rock reference does not teach a method for releasing a bound molecule as in the instant

application, but rather teaches related compounds that would rearrange to provide an effective sunscreen. The properties and characteristics of such molecules making them appropriate for use as a sunscreen involve changing the molecular structure to increase absorbance of ultraviolet light. There is no teaching that said rearrangement would release a fragrance.

The Action asserts that the skilled worker would recognize that the molecules of Rock could be derivatized to comprise a fragrance as R¹ that would be released. This is nothing more than hindsight reconstruction of Applicant's invention, since there is no nexus established in the Action between the rearrangement disclosed in the Rock reference (resulting in increased absorbance of ultraviolet light) with the rearrangement of the structurally-distinct molecules disclosed by Anderson to effect release of a fragrance molecule. It is only by using Applicant's disclosure as a template that the Office has fashioned the asserted obviousness rejection. If the Office cannot establish, by objective evidence, a reason why the skilled worker would have looked specifically to the molecules disclosed by Rock to find a molecule capable of rearrangement to release a fragrance, in light of the extensive teachings in the Anderson reference of structurally-dissimilar molecules (not to mention the universe of other molecules available to the skilled worker capable of intramolecular rearrangement to release a bound fragrance molecule), Applicant respectfully contends that the asserted obviousness rejection is contrary to the proper application of the statute to his pending claims, and requests that this obviousness rejection be withdrawn.

CONCLUSION

Applicants respectfully contend that the grounds of rejection asserted in the Office Action have been overcome by amendment or traversed by argument herein. Allowance of the claims is therefore respectfully solicited.

If the Examiner in charge of this application believes it to be helpful at any time during prosecution of this application, he or she is invited to contact Applicants' undersigned representative by telephone at (312) 913-0001.

Respectfully submitted,
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